



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WAGGONER CARR  
ATTORNEY GENERAL

August 9, 1965

Honorable Robert S. Calvert  
Comptroller of Public Accounts  
Austin, Texas

Opinion No. C- 479

Re: Whether you may law-  
fully make a cash  
refund on certain  
unused cigarette tax  
stamps.

Dear Mr. Calvert:

You ask the Attorney General if you may issue a State warrant to redeem at their face value certain cigarette tax stamps. The 59th Legislature, Regular Session, approved a claim of the C. B. Preston Estate for redemption in cash of 7,820 cigarette tax stamps issued by this State between June, 1952 and March, 1954. These stamps have a net value of \$303.42.

You further advise us that as of September 1, 1959 the cigarette tax rate was changed from 5 cents to 8 cents per package and at that time a new design of stamps was introduced. Further, you state that all stamps of the 5 cents denomination were recalled by the State and replaced with the new stamps and that the old stamps were declared by the State to be void after 60 days from such declaration.

Our opinion is that you are prohibited from redeeming or paying for these stamps in any manner.

Art. 7.08, Subd. (4) of Title 122A, Taxation General, in its pertinent portion, reads as follows:

"(4) The Comptroller is hereby authorized to change the design of the stamp as often as he may deem such change necessary to the best enforcement of the provisions of this Chapter, and the Treasurer is hereby required to redeem at face value any unused cigarette tax stamps lawfully issued, prior to such change in the design, which are in the possession of any bona fide owner, by exchanging at face value cigarette tax stamps of the new design. Provided,

that whenever a change is made in the design of the stamps every person holding stamps of the old design shall be required to send them to the Treasurer for exchange at face value for stamps of the new design. Such exchange shall be made within sixty (60) days after the date of the issue of the new design of stamps and it shall be unlawful for any person to have in his possession any stamps of an old design after sixty (60) days from the date of issue of a new design; . . .

"Any person who shall have in his possession any cigarette tax stamps of the old design after sixty (60) days from the date of issue of a new design of stamps shall be guilty of a felony and shall be punished as set out in Article 7.37 of this Chapter."

Since the stamps in question which were issued between June, 1952 and March, 1954 were superseded by the change in design and declaration of the Comptroller in 1959 pursuant to the above quoted statutory authority then these provisions clearly bar redemption of the stamps.

S U M M A R Y

Refund for cigarette tax stamps purchased prior to September 1, 1959 may not now be made.

Yours very truly,

WAGGONER CARR  
Attorney General of Texas

By:   
W. E. Allen  
Assistant Attorney General

WEA:rm

APPROVED:

OPINION COMMITTEE

W. V. Geppert, Chairman  
Malcolm Quick  
H. Grady Chandler  
George Black  
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APPROVED FOR THE ATTORNEY GENERAL  
BY: T. B. Wright